

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

LAIRD O'DELL,

Plaintiff,

v.

Civil Action No. 2:10-0046

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant.

MEMORANDUM OPINION AND ORDER

Pending are the parties' respective requests for judgment on the pleadings. Plaintiff, in the alternative, seeks remand for further proceedings before the Commissioner.

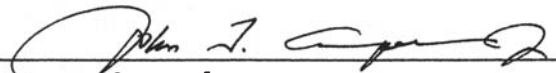
In her Proposed Findings and Recommendation ("PF&R") filed December 10, 2010, the magistrate judge recommends that the court reverse the Commissioner's final decision and remand the claim for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g). The magistrate judge offers a detailed analysis respecting why, inter alia, the administrative law judge's ("ALJ") pain and credibility findings are not consistent with governing law. Neither plaintiff nor the Commissioner have objected to the PF&R.

Having reviewed the matter de novo, it is ORDERED as follows:

1. That the PF&R be, and it hereby is, adopted by the court and incorporated herein;
2. That plaintiff's request for judgment on the pleadings be, and it hereby is, granted insofar as he requests remand to the Commissioner for further proceedings and otherwise denied;
3. That the Commissioner's request for judgment on the pleadings be, and it hereby is, denied; and
4. That the decision of the Commissioner be, and it hereby is, reversed and this claim is remanded to the Commissioner for further proceedings pursuant to the fourth sentence of 42 U.S.C.A. § 405(g), which proceedings shall include consideration of, and discussion by, the ALJ of the matters set forth in the PF&R at pages 24 to 30.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record and any unrepresented parties.

DATED: January 10, 2011



John T. Copenhaver, Jr.
United States District Judge